

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MARLYS B. SAMOY,

Appellant.

No. 37650-4-II

UNPUBLISHED OPINION

Houghton, P.J. — Marlys Samoy appeals her conviction for unlawful possession of a controlled substance with intent to deliver, arguing that insufficient evidence supported her conviction. We affirm.

FACTS

On November 6, 2007, the Mason County Sheriff's Office executed a search warrant at 480 Northeast Beitzel Drive in Belfair. A motor home and trailer sat on the property.

The front portion of the trailer contained a kitchen and a bed; the back portion was not habitable. In the trailer, the officers discovered loose drug paraphernalia and a wooden box containing methamphetamine, cash, scales, a ledger, and other items.¹ The officers found the wooden box on a pile of dust-covered garbage bags filled with women's clothing; at the time of discovery, the box was clean and dust-free. The officers also discovered photographs of Samoy

¹ The ledger made no reference to Samoy.

and documents bearing her name.²

During the search, Samoy told officers that she and her boyfriend, Gerald Spears, shared the trailer and motor home. According to Samoy's daughter, Maria Contreras, Samoy and Spears both owned and occupied the trailer. No witness placed Samoy in the trailer when the officers executed the search warrant.³

On November 8, the State charged Samoy with unlawful possession of a controlled substance with intent to deliver. The jury found her guilty. She appeals.

ANALYSIS

Samoy argues that substantive evidence does not support the jury verdict. She asserts that the State failed to prove she either actually or constructively possessed the methamphetamine found in the trailer. Although she acknowledges her dominion and control over the trailer, she argues that such dominion and control, without more, does not support the finding that she constructively possessed the drugs.

When analyzing a claim of insufficiency of the evidence, we determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. To do so, we review the evidence in the light most favorable to the State. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency of the evidence admits the truth of the State's evidence, and we draw all reasonable inferences from that evidence in favor of the State and most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829

² None of the documents contained the 480 Northeast Beitzel Drive address.

³ The officers claim Samoy was walking from the area of the trailer. Contreras claims Samoy was asleep in the motor home.

P.2d 1068 (1992). Circumstantial evidence can uphold a jury's verdict and is no less reliable than direct evidence. *State v. O'Neal*, 159 Wn.2d 500, 506, 150 P.3d 1121 (2007); *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The State charged Samoy with unlawful possession of a controlled substance with intent to distribute under RCW 69.50.401(1), and the jury found her guilty. Thus, the State must prove possession beyond a reasonable doubt because it is an essential element of the crime charged. *Green*, 94 Wn.2d at 221.

Possession may be actual or constructive. *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). Actual possession of contraband exists when a person has physical custody of the contraband. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). Constructive possession of contraband exists when a person has dominion and control over the contraband. *Jones*, 146 Wn.2d at 333. Dominion and control need not be exclusive for constructive possession to exist. *E.g. State v. Summers*, 107 Wn. App. 373, 384, 28 P.3d 780 (2001). We look to the totality of the circumstances to determine if substantial evidence exists to support a finding of constructive possession. *State v. Partin*, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977).

Proof of dominion and control over premises, without more, can support a finding of constructive possession over contraband on the premises. *Partin*, 88 Wn.2d at 905-08; *State v. Callahan*, 77 Wn.2d 27, 30-31, 459 P.2d 400 (1969). Such proof raises a rebuttable presumption of dominion and control over contraband on the premises. *State v. Tadeo-Mares*, 86 Wn. App. 813, 817, 939 P.2d 220 (1997); *State v. Cantabrana*, 83 Wn. App. 204, 208, 921 P.2d 572 (1996).

Here, Samoy acknowledges her dominion and control over the trailer. Furthermore, facts exist that confirm her admission. She owned and occupied the trailer with Spears. The officers discovered photographs of Samoy, documents bearing her name, and bags filled with women's clothing in the trailer. This situation closely resembles *Partin*, in which the court held that the defendant had dominion and control over contraband discovered in the back bedroom of a clubhouse where defendant received mail at the clubhouse, stored possessions in that bedroom, told people he could be reached at those premises, and acted as vice-president of the club. 88 Wn.2d at 905-08. Notably, the court in *Partin* limited its recitation of the evidence to evidence of dominion and control over the premises, not over the contraband. 88 Wn.2d at 905-08. Thus, sufficient evidence exists here that Samoy constructively possessed the contents of her trailer, including the methamphetamine.

Samoy argues that although she may have periodically lived in the trailer, the State failed to present evidence that she was in “present possession, actual or constructive, of the [wooden] box.”⁴ Appellant's Br. at 6. But a rational fact finder could have found that she failed to rebut the presumption that her dominion and control over the trailer evidenced constructive possession of the trailer's contents.⁵ Thus, her arguments fail.⁶

⁴ As evidence of this claim, Samoy notes her absence from the trailer at the time of the search, Spears' shared possession of the trailer, and the relative cleanliness of the wooden box compared to the dustiness of the remaining evidence found in the trailer.

⁵ For example, on the day of the search, Samoy planned to clean the property, including the motor home and trailer, and meet with an electrician to hook up power on the property, thus showing that she exercised present dominion and control over the trailer and its contents.

⁶ Samoy also relies on *Tadeo-Mares* and *Cantabrana* for the proposition that mere dominion and control over premises is insufficient to prove dominion and control over contraband discovered on

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Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, P.J.

We concur:

Hunt, J.

Quinn-Brintnall, J.

the premises. But this reasoning is inapposite because it relates to the issue of proper jury instructions, not sufficiency of the evidence. *See Tadeo-Mares*, 86 Wn. App. at 816-17; *Cantabrana*, 83 Wn. App. at 208.